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**Eastern Partnership-Council of Europe Facility Project on
“Good Governance and Fight against Corruption”**

Activity 3.3: “Pilot Activity”

Public Procurement through Reverse Electronic Auctions in the Republic of Belarus

Drafted by

Tilman Hoppe and Valts Kalnins, Council of Europe experts

Content

1. Summary	4
2. Introduction	5
3. Description of the Online Auction System in Belarus	6
4. Compliance with international standards	11
4.1. Overview	11
4.2. UNCITRAL Model Law, Chapter VI.....	12
4.3. MDB Guidelines.....	22
5. Conclusion	25

For more information, please contact:

This paper has been peer reviewed by Council of Europe Secretariat: Natia JGENTI

<i>Economic Crime and Co-operation Unit Action against Crime Department Directorate General Human Rights and Rule of Law Council of Europe 67075 Strasbourg CEDEX France</i>	<i>Tel: +33 3 88 41 26 29 Fax: + 33 3 88 41 27 05 Email: Natia.JGENTI@coe.int</i>
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1. SUMMARY

Upon request by the Belarusian authorities, this Technical Paper assesses compliance of the electronic auction system with international standards. An “electronic auction” is by and large a repetitive process involving an online platform for the presentation of new prices, revised downwards, in order to for the lowest (suitable) bid to win (electronic reverse auction – ERA). The advantages of ERAs seem to clearly outweigh possible disadvantages. Hence, their international recognition and use has strongly increased in recent years.

In 2012, the Republic of Belarus introduced ERAs as a tool for procuring certain goods funded by the public budget. This Paper assesses the compliance of the Belarusian online procurement with the following two international standards/guidelines:

- UNCITRAL Model Law on Public Procurement (2011), Chapter VI;
- Multilateral Development Banks e-Auctions Guidelines for MDB Financed Procurement (2005).

By and large, the Belarusian system of electronic auctions complies with international standards; within the scope of this assessment no fundamental flaws were observed. The system of electronic auctions might profit from considering the following points:

- Electronic auctions should be used for the procurement of goods (works, services) when sufficient market competition exists for their provision. The Belarusian authorities might consider elaborating simple guidelines for the analysis of the market situation of specific goods (works, services) in order to determine whether the competition is sufficiently strong in order to be adequate for the use of electronic auctions.
- There seem to be no procedures for rejecting abnormally low bids, which may result in contracts concluded at unrealistically low prices with subsequent poor delivery of the goods (works, services).
- Repealing of fees for participants of the electronic auctions might be beneficial because it is in the public interest to obtain the greatest number of auction proposals.
- The electronic auctions should not be used for large-scale procurement where international competition (beyond the Republic of Kazakhstan and the Russian Federation) would benefit the goals of the procurement entity. In such cases, methods that allow bidding without physical presence in the Republic of Belarus should be preferred (such presence is required in order to obtain the key of electronic digital signature).

2. INTRODUCTION

Upon request by the Belarusian authorities, this Technical Paper assesses compliance of the electronic auction system with international standards. The European Union Procurement directives define “electronic auctions” as follows:

“An ‘electronic auction’ is a repetitive process involving an electronic device for the presentation of new prices, revised downwards, and/or new values concerning certain elements of tenders, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.”¹

Thus, this Technical Paper is not about procurement in general, but about the specific aspects of a reverse electronic auction system.

The advantages of electronic reverse auctions (ERA) can be described as follows:

“The two main potential benefits of the use of ERAs have been identified as a reduction in the **price** of the goods or services procured and secondly, the increase of **efficiency** and **effectiveness** of the process in that it leads to a reduction in the costs and the time scales of the procurement process.

Many other advantages exist. ERAs can improve **transparency** in the procurement process since information on successive results of evaluation of bids at every stage of the auction and the final result of the auction are made known to all tenderers instantaneously and simultaneously. This will improve the **confidence** of tenderers participating in the process that they will be treated fairly and that the results will not be compromised by undue influence of any of the role players.

Because of the importance of specifications, it can lead to **better planning** and drafting of specifications and award criteria. Furthermore, ERAs are characterised by an evaluation process that is fully automated or with limited human intervention and therefore can **discourage** abuse and **corruption**. They can be **less costly** for both the procurement entity and the tenderers in that the process, and if well structured, is more accessible, cheaper and saves a lot of time.”²

As for possible disadvantages, one has to consider the following:

“Save for the fact that because of the nature of ERAs, it has **inherent limitations** making it only suitable for the more simple types of procurement that can be precisely specified, it does have certain other disadvantages. Because of the focus on price, **non-price factors** relevant to the procurement may be given insufficient attention. Such factors may include aspects like delivery times, socio-economic considerations, experience of tenderers and similar aspects.

ERAs could be used when inappropriate for the particular procurement and undue weight can be given to price, or price could be made the sole criteria when other criteria might be of equal importance. The danger exists that value for money is reduced because of a lack of consideration of such **non-economic factors**.

Long-term relations with high quality suppliers may be damaged causing them to exit the market. Prices may be reduced at the cost of quality and performance in delivery. If the tender price is too low and no mechanism exists to verify the viability of the tender price, it can lead to the failure of the contract. ERAs can lead to the use of a too formal and **mechanistic approach** to specifications that are not

¹ Art1(6) of 2004/17/EC and article 1(7) of 2004/18/EC (<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0017&from=EN>; <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32004L0018&from=EN>).

² Stephen de la Harpe, The Use of Electronic Reverse Auctions in Public Procurement in South Africa, SPECULUM JURIS 2012, 25, www.speculumjuris.co.za/files/pdf/SJ20121_delaHarpe.pdf.

necessarily appropriate for the particular procurement. **Collusion** between suppliers may be easier in the case of ERAs.

There might also be possible negative implications because of the **outsourcing** of decision making beyond government, such as to-third-party software and service providers. Procuring entities may have to incur overhead costs in training and facilitating tenderers who are not familiar with the process in bidding through electronic reverse auctions. In the electronic auction environment, an actual risk of suppliers gaining unauthorised access to **competitors'** commercially sensitive information exists. All the above factors may negatively affect the confidence of tenderers to participate in ERAs."³

The advantages of ERAs seem to clearly outweigh possible disadvantages, as their international recognition and use has strongly increased in recent years.⁴

This assessment is the result of a desk study of the Belarusian websites for electronic auctions, the respective regulations, as well as phone interviews and email exchanges conducted with the Belarusian authorities in November and December 2014.

3. BASIC DESCRIPTION OF THE ONLINE AUCTION SYSTEM IN THE REPUBLIC OF BELARUS

3.1. Open procedure

There are in general different procurement procedures possible:⁵

The open procedure

This is where all interested suppliers are asked to return tenders by a set date. These are then evaluated and the contract is awarded. This procedure is often used by local councils.

The restricted procedure

This is a 2-stage process. In the first stage, interested suppliers are asked to fill out a questionnaire and a short-list is drawn up. In the second stage, the shortlisted suppliers are invited to respond to an Invitation to Tender (ITT). The tenders are then evaluated and the contract awarded.

The competitive dialogue procedure

This procedure is used for more complex procurements. After a selection process, the buyer then negotiates with suppliers and invites chosen companies to put in a bid. Suppliers put in their tenders and the contract is awarded.

The negotiated procedure

In this procedure, the buyer enters into contract negotiations with one or more suppliers.

Electronic auctions can be used for any of the above variations. The Republic of **Belarus** has opted to use ERAs only for **open procedures**.

³ Stephen de la Harpe, The Use of Electronic Reverse Auctions in Public Procurement in South Africa, SPECULUM JURIS 2012, 27, www.speculumjuris.co.za/files/pdf/SJ20121_delaHarpe.pdf.

⁴ Ama Eyo, The EC Rules on Electronic Auctions: Scope and Adequacy of the Rules, 2007, page 2, <http://www.nottingham.ac.uk/pprg/documentsarchive/phdconference2007/electronicreverseauctiongraduateconference2-ama.doc>.

⁵ <https://www.gov.uk/tendering-for-public-sector-contracts/the-procurement-process>.

3.2. Competent state body

According to the Ordinance of the President of the Republic of Belarus (hereafter – the Ordinance) the Ministry of Trade is the **authorised state body** for the state procurement (Article 1.1). The authority of the authorised body is defined in Section 8 of the law “On the State Procurement of Goods (Works, Services)” No. 419-3 of 13 July 2012 (monitoring of the practice, review of complaints, approval of template documents of procurement procedures, etc.). Hereafter “Sections” always refer to this law.

3.3. Applicability of electronic auctions

The law “On the State Procurement of Goods (Works, Services)” introduced the obligation to use the procedure of electronic auction for the procurement of goods (works, services) included in the respective list adopted by the Council of Ministers (Section 41, Paragraph 2). The new law is in force since **1 January 2013**. Electronic auctions shall be carried out on the electronic trading platforms of operators determined by the Council of Ministers (Section 42, Paragraph 3). As a non-compulsory option, electronic auctions were used already earlier (oldest notices online are from 2011).

The Council of Ministers adopted a detailed list of goods (works, services), which shall be procured by using electronic auctions (decision of 22 August 2012, No. 778). The use of the electronic auctions is optional when bodies buy goods (works, services) from “their own means”, i.e. not funded by the public budget (decision of the Council of Ministers of 15 March 2012, No. 229). Such purchases are not considered to be state procurement. There are lists of goods that shall be specifically procured with other methods, i.e. some arms and military equipment as well as certain goods that shall be purchased through commodity exchange trading carried out by the Belarusian Universal Commodity Exchange (the decision of the Council of Ministers of 22 August 2012, No. 778).

During the last years, the share of electronic auctions among all procurement procedures has been increasing. 415 electronic auctions were carried out in 2011 (0.02% of all procurement procedures), 1,079 electronic auctions – in 2012 (0.44% of all procurement procedures), and 16,993 – in 2013 (4.46% of all procurement procedures).⁶

3.4. Procedure

The organiser (buyer) of the auction shall approve the **auction documents** before the invitation to the auction is placed (Section 43, Paragraph 1). The auction documents (as well as their amendments or additions) shall be posted simultaneously with the invitation on the official website and for open access on the electronic trading platform (Section 43, Paragraphs 3 and 7). Before that, the disclosure of the auction documents to the participants is not allowed (Section 43, Paragraph 4).

The organiser (buyer) of the auction may demand participants to provide auction **guarantees** in the amount of no more than 3 percent of the starting price of the auction or the price proposed by the participant (Section 44, Paragraph 2). Within one working day since the deadline for the submission of proposals, the operator of the electronic trading platform verifies the guarantees and notifies (in the procedure set by the regulations of the platform) a participant who has either not

⁶ Министерство торговли Республики Беларусь, Анализ данных централизованной государственной статистической отчетности о государственных закупках товаров (работ, услуг), 27 June 2013.
http://www.mintorg.gov.by/index.php?option=com_content&task=view&id=1673&Itemid=693.
Additional information provided by Belarusian authorities.

provided the guarantee or whose guarantee does not comply with set requirements (Section 44, Paragraph 4).

Persons who want to participate in an electronic auction shall submit their **proposals** in the electronic trading platform in the format of **electronic documents**. The proposal shall consist of two parts. Part one shall contain information required by auction documents (e.g. characteristics of the goods to be provided), notification of the right to preferential adjustment if such adjustment is stipulated by the Council of Ministers), notification of agreement to conclude the contract on terms stipulated in the auction documents and in the proposal, the price of the proposal if the starting price of the auction shall be defined as the lowest price of proposals admitted to the auction. Part two shall provide data on the participant (name, etc.), proof of compliance with requirements for the participants (e.g. qualification) and other documents stipulated in the auction documents (Section 45, Paragraph 2).

The procedure consists of **two main phases** – (1) the submission and review of proposals and (2) the actual auction.

No later than on the working day following the deadline for the submission of proposals, the operator of the electronic trading platform provides the organiser of the auction (buyer) with access to the first parts of the proposals (Section 46, Paragraph 1). The procurement commission **reviews** the first parts of the proposals regarding **compliance** with auction documents no later than 10 days after the deadline for the submission of proposals and no later than 2 days before the auction. Negotiations between the commission and participants shall not be allowed. The commission may ask a participant for explanations regarding the first part of its proposal via the electronic trading platform. The commission shall reject a proposal if its first part does not comply with auction documents or contains data that identify the participant (it may reject all proposals when, for example, there is not enough of available funding) (Section 46, Paragraph 2). Conflict-of-interest provisions for the members of the procurement commission are defined in Section 19, Paragraph 3.

The organiser shall post in open access the **protocol** of the meeting of the commission, which shall contain the starting price if it is determined as the lowest price from among the proposals, registration numbers (it seems that these number do not reveal the real identities of the participants) of approved and rejected participants as well as participants entitled to the preferential adjustment, and the decision to hold the auction or declare it void (Section 46, Paragraph 3). The operator of the electronic trading platform shall send respective notifications to the participants (Section 46, Paragraph 4).

The auction shall be held when there are **no fewer than two approved participants** (Section 47, paragraph 1). The auction starts with the initial price. The participants may place their bids lower than the start price or than the previous bid (if there is a bid already) considering the established increment (Section 47, Paragraph 5).

Bids are **visible** to other bidders during the auction (Section 47, Paragraph 2). The auction protocols are on the websites of electronic trading platforms (they are password protected on the site of the Belarusian Universal Commodity Exchange). On the site of the National Center of Marketing and Price Conjuncture it is even possible for anybody to see the whole competition of bids with amounts, time by the second and bidders' identities in the published protocols.

From the beginning of the auction on, the electronic trading platform shall publish the time within which the participants shall be able to place bids, the bids of participants and the time when those bids were placed (Section 47, Paragraph 2). Names, locations and tax numbers of participants shall not be published during the auction (Section 47, Paragraph 3).

Bids are accepted within **ten minutes** since start of the auction or ten minutes since the last bid (Section 47, Paragraph 5). The auction is finished if no bids are submitted within ten minutes since the start of the bidding or within ten minutes since the last bid (Section 47, Paragraph 6). So, yes, it

seems that to the last second. After the passing of ten minutes with no new bids, the participant who submitted the last bid is invited to reduce it to any positive amount (Section 47, Paragraph 5), which he/she may or may not do.

After the **end** of the **auction**, the electronic trading platform shall post the starting price of the auction, the last bid and one bid before the last, identities, locations and the payer numbers of the submitters of these bids (Section 47, Paragraph 8). The operator of the platform then provides the organizer (buyer) of the auction with access to the second parts of the proposals submitted by the last bidder and the one before last (Section 47, Paragraph 8).

The **winner** of the auction is the participant that made the last bid if it complies with the requirements of auction documents with regard to its composition and qualification. If the last bidder is rejected (upon grounds stipulated in Section 48, Paragraph 1, Passage 4; Section 14, Paragraph 3; Section 21, Paragraph 1 of the law), the participant with the bid before last is selected (provided it complies with the requirements) (Section 48, Paragraph 2).

The **protocol** of the commission shall be posted on the official website in open access and shall contain, among other things, the decision to choose the winner or cancel or declare the auction void, names of the participants that submitted the last bid and the bid before last, the bids, information on the compliance (failure to comply) of participants with requirements regarding their composition and qualification (Section 48, Paragraph 3). The organizer (buyer) shall notify the operator of the electronic trading platform on the conclusion of the contract no later than on the next working day after the conclusion of the contract and posts the announcement on the result of the electronic auction (Section 48, Paragraph 4).

The search of the auctions of the National Center of Marketing and Price Conjuncture shows that 24,145 auctions have been declared **void** or **cancelled** (as a whole or particular lots within them) in contrast to 11,087 completed auctions (the figures cover all electronic auctions, not only those that are carried out as public procurement as of 11 December 2014). For the platform of the Belarusian Universal Commodity Exchange the figures are respectively 6,708 and 3,125. The system allows the user to see reasons for the voiding or cancellation of each particular auction but they are not compiled in any sort of report. Too few participants or changes in what shall be procured are some common reasons. When the auction has been considered void, the Ordinance of the President of the Republic of Belarus of 31 December 2013 "On Some Issues of the State Procurement of Goods (Works, Services)", with some conditions, allows the use of the procedure of procurement from one source (Article 2.2).

3.5. Websites

There are **the official website** for the state procurement and **two websites** of electronic trading platforms. The Decision of Council of Ministers of 22 August 2012 No. 778 designates the website www.icetrade.by run by the National Center of Marketing and Price Conjuncture as the official site for the state procurement. It shall contain searchable information on all state procurements.⁷ The Decision further designates the National Center of Marketing and Price Conjuncture (<http://www.goszakupki.by/>) as well as the Belarusian Universal Commodity Exchange (<http://zakupki.butb.by/auctions/index.html>) as operators of electronic trading platforms. Registered users of the websites obtain a **password** and an electronic signature **key**.

Both the website www.icetrade.by and the electronic trading platforms allow **searching** by **keywords**. On the electronic trading platform of the Belarusian Universal Commodity Exchange auctions can be searched by the following criteria: the item of procurement, registration number,

⁷ „Icetrade” Internet Centre for Electronic Trade, Поиск закупок.
[http://www.icetrade.by/search/auctions?search_text=&search=%D0%9D%D0%B0%D0%B9%D1%82%D0%B8&zakup_type\[1\]=1&zakup_type\[2\]=1&auc_num=&okrb=&company_title=&establishment=0&period=&created_from=&created_to=&request_end_from=&request_end_to=&t\[Trade\]=1&t\[eTrade\]=1&t\[Request\]=1&t\[singleSource\]=1&t\[Auction\]=1&t\[Other\]=1&t\[contractingTrades\]=1&t\[negotiations\]=1&r\[1\]=1&r\[2\]=2&r\[7\]=7&r\[3\]=3&r\[4\]=4&r\[6\]=6&r\[5\]=5&sort=num%3Adesc&onPage=20](http://www.icetrade.by/search/auctions?search_text=&search=%D0%9D%D0%B0%D0%B9%D1%82%D0%B8&zakup_type[1]=1&zakup_type[2]=1&auc_num=&okrb=&company_title=&establishment=0&period=&created_from=&created_to=&request_end_from=&request_end_to=&t[Trade]=1&t[eTrade]=1&t[Request]=1&t[singleSource]=1&t[Auction]=1&t[Other]=1&t[contractingTrades]=1&t[negotiations]=1&r[1]=1&r[2]=2&r[7]=7&r[3]=3&r[4]=4&r[6]=6&r[5]=5&sort=num%3Adesc&onPage=20).

number on the “Icetrade”, name of the buyer, region of the buyer (organiser), date of publication, deadline for the submission of proposals, date of the trading, date of completion, state of the auction (submission of proposals, proposals under consideration, auction hall, trading, trading completed, choice of the winner, winner chosen, signing of contract, completed, void, cancelled, suspended).⁸ A similar search system (with slightly different criteria and a free text search possibility) is on the website of the National Center of Marketing and Price Conjuncture.⁹

There is a simple **graph** that shows the criteria for selecting procurement procedures under the law “On the State Procurement of Goods (Works, Services)”.¹⁰ The electronic trading platform of the Belarusian Universal Commodity Exchange features graphic step-by-step guides for how to get accredited on the platform (separately for residents of the Republic of Belarus, for residents of Kazakhstan and the Russian Federation, and for other non-residents of the Republic of Belarus).¹¹ The website also carries the announcement of free training opportunities on how to work with electronic auction on the electronic trading platforms. Users accredited with the electronic trading platform are offered a possibility to see slides on the theory (legislation, basics of the electronic documentation circulation, technology of executing the electronic auction) and practice (interfaces of the electronic trading platform at all stages of the electronic auction).¹² Training opportunities and detailed instructions on how to get accredited are found also on the website of the National Center of Marketing and Price Conjuncture.¹³

The Ministry of Trade has published the **procurement law** and other regulatory acts on its website.¹⁴ The electronic trading platforms publish their regulations.¹⁵

Draft **contracts** are published together with the auction documentation but not the actual concluded contracts.

The oldest **published tenders** are from 2011. The regulation on the procedure of publishing information on the state procurement and legislative acts on the state procurement on the official site requires keeping information on the official site for five years and thereafter archiving it for further 2 years (Article 16).

3.6. Foreign bidders

The so-called national regime shall be applied to foreign participants whose countries provide the same regime to participants from the Republic of Belarus (Section 5, Paragraph 1). Otherwise specific conditions (including the so-called preferential adjustment) can be stipulated by the Council of Ministers (also for the procurement for defence or security needs and procurement of concrete goods (works, services) from a potential provider based on a decision or order by the President of the Republic of Belarus) (Section 5, Paragraph 2).

⁸ Белорусская универсальная товарная биржа, Реестр аукционов ЭТП БУТБ.

<http://zakupki.butb.by/auctions/reestrauctions.html>.

⁹ Национальный центр маркетинга и конъюнктуры цен, электронная торговая площадка, Поиск аукционов.

[http://www.goszakupki.by/search/auctions?auc_num=&search_text=&price_from=&price_to=&created_from=&created_to=&request_end_from=&request_end_to=&auction_date_from=&auction_date_to=&s\[a\]=1&s\[b\]=1&s\[e\]=1&s\[p\]=1&s\[v\]=1&s\[c\]=1&s\[w\]=1&s\[s\]=1&s\[m\]=1&p=3583](http://www.goszakupki.by/search/auctions?auc_num=&search_text=&price_from=&price_to=&created_from=&created_to=&request_end_from=&request_end_to=&auction_date_from=&auction_date_to=&s[a]=1&s[b]=1&s[e]=1&s[p]=1&s[v]=1&s[c]=1&s[w]=1&s[s]=1&s[m]=1&p=3583).

¹⁰ Министерство торговли Республики Беларусь, Методические рекомендации.

http://www.mintorg.gov.by/index.php?option=com_content&task=view&id=1670&Itemid=690.

¹¹ Белорусская универсальная товарная биржа, С чего начать? <http://zakupki.butb.by/auctions/begin.html>.

¹² Белорусская универсальная товарная биржа, Обучение. <http://zakupki.butb.by/auctions/education.html>.

¹³ Национальный центр маркетинга и конъюнктуры цен, электронная торговая площадка, Первичная регистрация.

<http://ca.ncmps.by/articles/view/8>.

Национальный центр маркетинга и конъюнктуры цен, Бизнес-образование. <http://ncmps.by/biznes-obrazovanie.html>.

¹⁴ Министерство торговли Республики Беларусь, Нормативные правовые акты.

http://www.mintorg.gov.by/index.php?option=com_content&task=view&id=1669&Itemid=689.

¹⁵ Регламент электронной торговой площадки РУП Национальный центр маркетинга и конъюнктуры цен. <http://goszakupki.by/userfiles/file/reglament.pdf>.

Белорусская универсальная товарная биржа, Нормативные документы биржи.

<http://zakupki.butb.by/auctions/pravo-butb.html>.

3.7. Accreditation

Only those organisers of auctions and those suppliers can participate at an electronic trading platform who have been accredited with the platform. The operator of the platform carries out the accreditation, which shall be awarded for a period of no less than three years according to the procedure established by the Council of Ministers (Section 42). The registers of accredited persons/ entities are available online.¹⁶ There is a regulation on the procedure of accreditation on the electronic trading platform (approved within the Decision of Council of Ministers of 22 August 2012 No. 778, as amended on 30 December 2013).

4. COMPLIANCE WITH INTERNATIONAL STANDARDS

4.1. Overview

There are many international standards on procurement in general, such as:

- OECD, Recommendation of the Council on Enhancing Integrity in Public Procurement (2008)¹⁷
- OECD Principles for Integrity in Public Procurement (2009)¹⁸
- UNODC, Guidebook on anti-corruption in public procurement and the management of public finances (2013)¹⁹
- CMI/DFID, The basics of integrity in procurement, A guidebook (2010)²⁰
- United Nations Global Compact, Fighting Corruption in the Supply Chain: A Guide for Customers and Suppliers (2000)²¹

However, the issue of this Technical Paper is not procurement in general, but about the risks that derive **specifically** and only from procuring through **electronic auctions**. The following international standards are available on electronic auctions:

- UNCITRAL Model Law on Public Procurement (2011), Chapter VI²²
- World Trade Organisation, Revised Agreement on Government Procurement (2014), Article XIV²³

The UNCITRAL Model Law is the most comprehensive one, whereas the WTO Agreement deals with electronic auctions only in one rather short article:

Article XIV — Electronic Auctions

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

¹⁶ <http://zakupki.butb.by/auctions/reestr.html>.

¹⁷ <http://www.goszakupki.by/certificates/calist>.

¹⁸ www.oecd.org/governance/ethics/41549036.pdf.

¹⁹ www.oecd.org/gov/ethics/48994520.pdf.

²⁰ www.unodc.org/documents/corruption/Publications/2013/Guidebook_on_anti-corruption_in_public_procurement_and_the_management_of_public_finances.pdf.

²¹ www.cmi.no/file/?971.

²² www.unglobalcompact.bg/wp-content/uploads/2014/05/131.pdf.

²³ http://www.uncitral.org/uncitral/en/uncitral_texts/procurement_infrastructure/2011Model.html.

²³ http://www.wto.org/english/news_e/news14_e/gpro_07apr14_e.htm.

- *the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;*
- *the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and*
- *any other relevant information relating to the conduct of the auction.*

All above aspects of the Article XIV of the WTO Agreement are included in the UNCITRAL Model Law. Therefore, this Technical Paper follows the UNCITRAL Model Law as a benchmark.

One should also mention in this context the

- Multilateral Development Banks e-Auctions Guidelines for MDB Financed Procurement (2005)²⁴

The MDB Guidelines are not an international standard as they are not addressed to national countries, but only to development banks. However, the Guidelines touch on a few technical issues not contained in the UNCITRAL Model Law. Therefore, this Technical Paper draws additionally also on some of the technical benchmarks contained in the Guidelines.

4.2. UNCITRAL Model Law, Chapter VI

The following boxes contain in italics the consecutive parts of Chapter VI divided into the different paragraphs and sub-paragraphs. Emphasis in bold letters is by authors for the purpose of quick reference.

CHAPTER VI. ELECTRONIC REVERSE AUCTIONS

Article 53. Electronic reverse auction as a stand-alone method of procurement

*1. The procuring entity shall solicit bids by causing an **invitation** to the electronic reverse auction to be published in accordance with article 33 of this Law. The invitation shall include:*

*(a) The **name** and address of the procuring entity;*

The procedure of reverse electronic auctions is **largely compliant** with the requirements of the Article 53 of the UNCITRAL Model Law.

In all cases where the electronic auctions are used, the organizer (procuring entity) of the auction shall post simultaneously the invitation to participate as well as auction documents on the official website and for open access on the electronic trading platform (Section 43, Paragraph 3, Belarusian Procurement Law). However, there is no requirement of an international publication as foreseen in Article 33, Paragraph 2 of the Model Law. In practice, obviously though, anybody can access the online platform and see the tenders. The invitation shall include the name, location, e-mail and/or website, and the registration number of the procuring entity (Section 21, Paragraph 1, Belarusian Procurement Law).

*(b) A detailed **description** of the subject matter of the procurement, in conformity with article 10 of this Law, and the desired or required time and location for the provision of such subject matter;*

The auction documents (published together with the invitation) shall contain the description of the subject matter of procurement including the amount of the subject matter to be purchased and the time and place of delivery (Section 43, Paragraph 1, Belarusian Procurement Law). Detailed rules

²⁴ http://siteresources.worldbank.org/INFORMATIONANDCOMMUNICATIONANDTECHNOLOGIES/Resources/e-reverse_auction-requirements.pdf.

for the description of the subject matter are set out in the Section 20 of the Procurement Law. In particular, the description shall contain consumer, technical and economic parameters, including where necessary technical specifications, plans, drawings and designs. The description shall provide a complete picture of the subject matter and be set out in such a way as to prevent deliberate choice of goods (works, services) supplied by only one supplier (Section 20, Paragraph 1, Belarusian Procurement Law). Although the law does not use the terms responsive submission, the description effectively serves the purpose of defining minimum requirements.

*(c) The **terms** and conditions of the procurement contract, to the extent they are already known to the procuring entity, and the form of the contract, if any, to be signed by the parties;*

The auction documents shall include the draft contract and the deadline for signing of the contract (Section 43, Paragraph 1, Belarusian Procurement Law).

(d) A declaration pursuant to article 8 of this Law;

*[Article 8. **Participation by suppliers** or contractors*

*1. Suppliers or contractors shall be permitted to participate in procurement proceedings without regard to **nationality**, except where the procuring entity decides to limit participation in procurement proceedings on the basis of nationality on grounds specified in the procurement regulations or other provisions of law of this State.*

2. Except when authorized or required to do so by the procurement regulations or other provisions of law of this State, the procuring entity shall establish no other requirement aimed at limiting the participation of suppliers or contractors in procurement proceedings that discriminates against or among suppliers or contractors or against categories thereof.

*3. The procuring entity, when first soliciting the participation of suppliers or contractors in the procurement proceedings, shall **declare** whether the participation of suppliers or contractors in the procurement proceedings is limited pursuant to this article and on which ground. Any such declaration may not later be altered.*

4. A procuring entity that decides to limit the participation of suppliers or contractors in procurement proceedings pursuant to this article shall include in the record of the procurement proceedings a statement of the reasons and circumstances on which it relied.

5. The procuring entity shall make available to any person, upon request, its reasons for limiting the participation of suppliers or contractors in the procurement proceedings pursuant to this article.]

The Procurement Law defines the general rules for the eligibility of non-Belarusian suppliers (Section 5) but there are no explicit requirements to indicate the eligibility of foreign suppliers for each particular auction in the invitation or auction documents. However, the webpage provides information on the registration procedures for foreign suppliers.

*(e) The criteria and procedures to be used for ascertaining the **qualifications of suppliers** or contractors and any documentary evidence or other information that must be presented by suppliers or contractors to demonstrate their qualifications in conformity with article 9 of this Law;*

The invitation shall include requirements to the composition of participants as well as qualification requirements including the list of documents and data for their verification (if the procuring entity (organiser) is to carry out such verification) (Section 21, Paragraph 1, Belarusian Procurement Law).

*(f) The criteria and procedure for **examining bids** against the description of the subject matter of the procurement;*

The auction documents shall include a reference to the acts of legislation according to which the procedure is carried out (Section 43, Paragraph 1, Belarusian Procurement Law). According to the Procurement Law the procurement commission shall review the compliance of the first parts of proposals (mainly describing the offer of the subject matter) with the auction documentation before the auction and the second parts of the proposals (mainly describing the participant's qualification, etc.) after the end of the auction.

*(g) The criteria and procedure for **evaluating bids** in accordance with article 11 of this Law, including any mathematical formula that will be used in the evaluation procedure during the auction;*

The procedure does not distinguish between the examining and evaluation of bids. Aside from the compliance of the participant and the good (work, service) with the set requirements, the bids as such are to be evaluated solely based on their numerical value. If such adjustment is stipulated by the Council of Ministers, the auction documents shall contain conditions for the application of the preferential adjustment (Section 43, Paragraph 1, Belarusian Procurement Law). There shall be no non-price evaluation criteria in the electronic auction.

*(h) The manner in which the **bid price** is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the subject matter of the procurement itself, such as any applicable transportation and insurance charges, customs duties and taxes;*

According to Belarusian Procurement Law, the auction documents shall contain the formula for the calculation of the bid (the formula is in fact probably quite simple: the lowest bid wins). The documents shall also include requirements for the duration and scope of warranty for the quality of the supplied good (work, service), maintenance of the good and operation costs (Section 43, Paragraph 1).

*(i) The **currency** or currencies in which the bid price is to be formulated and expressed;*

The auction documents shall contain the currency in which the bids shall be expressed (Section 43, Paragraph 1, Belarusian Procurement Law).

*(j) The **minimum number of suppliers** or contractors required to register for the auction in order for the auction to be held, which shall be sufficient to ensure effective competition;*

The auction shall be held when there are no fewer than two approved participants (Section 47, paragraph 1, Belarusian Procurement Law).

*[(k) If any **limit on the number of suppliers** or contractors that can be registered for the auction is imposed in accordance with paragraph 2 of this article, the relevant maximum number and the criteria and procedure, in conformity with paragraph 2 of this article, that will be followed in selecting it;]*

The procedure of electronic auctions does not foresee a possibility to impose an upper limit on the number of suppliers.

*(l) How the auction can be **accessed**, including appropriate information regarding connection to the auction;*

The invitation shall include the place where proposals shall be submitted (Section 21, Paragraph 1). The proposals shall be uploaded on the electronic trading platform where the auction is to be carried out (Section 45, Paragraph 2, Belarusian Procurement Law).

*(m) The **deadline** by which suppliers or contractors must register for the auction and the requirements for registration;*

The invitation shall include the deadline by which suppliers shall prepare and submit their proposals (Section 43, Paragraph 1, Belarusian Procurement Law).

*(n) The date and time of the **opening** of the auction and the requirements for identification of bidders at the opening of the auction;*

The invitation shall include the date of the auction. The time of the start of the auction shall be set by the operator of the electronic trading platform according to the requirements of its regulations (Section 43, Paragraph 1, Belarusian Procurement Law). For example, according to the Regulation of the Belarusian Universal Commodity Exchange the time of the beginning of the trading shall be determined by the procuring entity (organiser) within the period from 9AM till 4PM (Article 38) and included in the invitation.²⁵ According to the Regulations of the platform of the National Center of Marketing and Price Conjuncture the operator shall determine the time of the beginning of the trading taking into account the load of the server (Article 8.3).²⁶

The date when the invitation for bids is published appears on the website. The oldest published entry on public procurement auction on the website of the Belarusian Universal Commodity Exchange, is from 11 July 2011. On the website of the National Center of Marketing and Price Conjuncture, the oldest bid is from 8 June 2011.

*(o) The criteria governing the **closing** of the auction;*

According to the Procurement Law the auction shall be finished if no bids are submitted within ten minutes since the start of the bidding or within ten minutes since the last bid (Section 47, Paragraph 6, Belarusian Procurement Law). This information is not included in the auction documents, but is available from the auction website, which should be sufficient.

*(p) **Other rules** for the conduct of the auction, including the information that will be made available to the bidders in the course of the auction, the language in which it will be made available and the conditions under which the bidders will be able to bid;*

The auction documents shall contain also such information as the amount of payment for the services of the operator of the electronic trading platform if the obligation of such payment is established by the procurement legislation; the description of the lots of the subject matter if it is divided into lots; requirements regarding the contents, form and duration of the validity of the proposals. The documents may include also requirements for the auction guarantee and/or guarantee for the implementation of the contract; the currency and if necessary also the exchange rate that shall be used for the transformation of the bid into the contract price; other requirements in accordance with the requirements of the Procurement Law and other legislative acts (Section 21, Paragraph 1; Section 41, Paragraphs 1 and 2, Belarusian Procurement Law). The information that will be made available to the bidders in the course of the auction is described in the Procurement Law and other regulatory acts.

*(q) References to this Law, the **procurement regulations** and other laws and regulations directly pertinent to the procurement proceedings, including those applicable to procurement involving classified information, and the place where those laws and regulations may be found;*

The auction documents shall include a reference to the acts of legislation according to which the procedure is carried out (Section 43, Paragraph 1, Belarusian Procurement Law). There is no explicit requirement to indicate the place where the laws and regulations may be found.

*(r) The means by which suppliers or contractors may seek **clarification** of information relating to the procurement proceedings;*

The auction documents shall contain the procedure for the clarification of auction documents (Section 43, Paragraph 1, Belarusian Procurement Law).

*(s) The name, functional title and address of one or more **officers** or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from*

²⁵ <http://zakupki.butb.by/auctions/pravo-butb.html>.

²⁶ Регламент электронной торговой площадки РУП Национальный центр маркетинга и конъюнктуры цен. <http://goszakupki.by/userfiles/file/reglament.pdf>.

suppliers or contractors in connection with the procurement proceedings before and after the auction without the intervention of an intermediary;

The invitation shall include the names and phone numbers of employees of the procuring entity (organiser) designated to ensure contacts with participants or other legal and physical persons (Section 21, Paragraph 1, Belarusian Procurement Law).

*(t) Notice of the right provided under article 64 of this Law to challenge or **appeal decisions** or actions taken by the procuring entity that are allegedly not in compliance with the provisions of this Law, together with information about the duration of the applicable standstill period and, if none will apply, a statement to that effect and the reasons therefore;*

There is no requirement to include a notice about appeal possibilities in the invitation of auction documents. However, in practice, it is probably enough if suppliers can look up the respective provisions in the laws which are provided on the auction webpage. There is no data available to the number and typical content of complaints or appeals.

*(u) Any **formalities** that will be required after the auction for a procurement contract to enter into force, including, where applicable, ascertainment of qualifications or responsiveness in accordance with article 57 of this Law and the execution of a written procurement contract pursuant to article 22 of this Law;*

The formalities that are required after the auction for a procurement contract to enter into force are set out in the Procurement Law and other regulatory acts.

*(v) Any **other requirements** established by the procuring entity in conformity with this Law and the procurement regulations relating to the procurement proceedings.*

See the information regarding the provision (p) above.

*[2. The procuring entity may impose a **maximum limit** on the number of suppliers or contractors that can be registered for the electronic reverse auction only to the extent that capacity constraints in its communications system so require, and shall select the suppliers or contractors to be so registered in a non-discriminatory manner. The procuring entity shall include a statement of the reasons and circumstances upon which it relied to justify the imposition of such a maximum limit in the record required under article 25 of this Law.]*

The procedure of the electronic auctions does not foresee a possibility to impose a limit on the number of suppliers.

*3. The procuring entity may decide, in the light of the circumstances of the given procurement, that the electronic reverse auction shall be **preceded by an examination** or evaluation of initial bids. In such case, the invitation to the auction shall, in addition to information listed in paragraph 1 of this article, include:*

(a) An invitation to present initial bids, together with instructions for preparing initial bids;

(b) The manner, place and deadline for presenting initial bids.

The whole procedure of electronic auctions consists of the principal phases – (1) the submission and review of proposals and (2) the actual auction. The first stage is mandatory and hence an invitation to the auction by default represents an invitation to present “the initial bids”, i.e. proposals. All of what has been described above with regard to the manner, place and deadline for the proposals refers to the submission of such “initial bids”.

4. Where the electronic reverse auction has been preceded by an examination or evaluation of initial bids, the procuring entity shall promptly after the **completion of the examination** or evaluation of initial bids:

(a) Dispatch the notice of rejection and reasons for rejection to each supplier or contractor whose initial bid was rejected;

(b) Issue an invitation to the auction to each qualified supplier or contractor whose initial bid is responsive, providing all information required to participate in the auction;

(c) Where an evaluation of initial bids has taken place, each invitation to the auction shall also be accompanied by the outcome of the evaluation, as relevant to the supplier or contractor to which the invitation is addressed.

The procurement commission reviews the first parts of the proposals (mainly dealing with the subject matter of the procurement) regarding compliance with auction documents no later than 10 days after the deadline for the submission of proposals and no later than 2 days before the auction. The commission shall reject a proposal if its first part does not comply with auction documents or contains data that identify the participant (it may reject all proposals when there is not enough of available funding and it is inexpedient to reduce the amount of the subject matter of the procurement) (Section 46, Paragraph 2, Belarusian Procurement Law).

The organiser shall publish in open access the protocol of the meeting of the commission, which shall contain the registration numbers of approved and rejected participants as well as participants entitled to the preferential adjustment, and the decision to hold the auction or declare it void (Section 46, Paragraph 3, Belarusian Procurement Law). For example, according to the Regulation of the Belarusian Universal Commodity Exchange the protocol shall be posted online no later than on the next working day after the commission meeting (Article 37).²⁷ A similar requirement is found in the Regulations of the platform of the National Center of Marketing and Price Conjuncture (Article 12.3). The operator of the electronic trading platform shall also send respective notifications to the participants (Section 46, Paragraph 4, Belarusian Procurement Law).

*Article 54. Electronic reverse auction as a phase **preceding the award** of the procurement contract*

1. Where an electronic reverse auction is to be used as a phase preceding the award of the procurement contract in a procurement method, as appropriate, or in a framework agreement procedure with second-stage competition, the procuring entity shall notify suppliers or contractors when first soliciting their participation in the procurement proceedings that an auction will be held, and shall provide, in addition to other information required to be included under provisions of this Law, the following information about the auction:

(a) The mathematical formula that will be used in the evaluation procedure during the auction;

(b) How the auction can be accessed, including appropriate information regarding connection to the auction.

2. Before the electronic reverse auction is held, the procuring entity shall issue an invitation to the auction to all suppliers or contractors remaining in the proceedings, specifying:

(a) The deadline by which the suppliers or contractors must register for the auction and requirements for registration;

(b) The date and time of the opening of the auction and requirements for the identification of bidders at the opening of the auction;

²⁷ <http://zakupki.butb.by/auctions/pravo-butb.html>.

(c) Criteria governing the closing of the auction;

(d) Other rules for the conduct of the auction, including the information that will be made available to the bidders during the auction and the conditions under which the bidders will be able to bid.

3. Where an evaluation of initial bids has taken place, each invitation to the auction shall also be accompanied by the outcome of the evaluation as relevant to the supplier or contractor to which the invitation is addressed.

This Article of the Model Law is not applicable as the electronic auction represents only a stand-alone procurement procedure (so called “open procedure” – see above chapter 3).

Article 55. Registration for the electronic reverse auction and the timing of the holding of the auction

*1. **Confirmation of registration** for the electronic reverse auction shall be communicated promptly to each registered supplier or contractor.*

The procedure of reverse electronic auctions is **compliant** with the requirements of the Article 55 of the UNCITRAL Model Law.

The operator of the electronic trading platform shall notify a participant about the date and time of the registration of its proposal (Section 45, Paragraph 3, Belarusian Procurement Law). The organiser shall post in open access the protocol of the procurement commission, which shall contain registration numbers of approved and rejected participants as well as participants entitled to the preferential adjustment, and the decision to hold the auction or declare it void (Section 46, Paragraph 3, Belarusian Procurement Law). The operator of the electronic trading platform shall send respective notifications to the participants (Section 46, Paragraph 4, Belarusian Procurement Law).

*2. If the number of suppliers or contractors registered for the electronic reverse auction is insufficient to ensure effective competition, the procuring entity may cancel the auction. The **cancellation** of the auction shall be communicated promptly to each registered supplier or contractor.*

The organiser shall publish in open access the protocol of the meeting of the commission, which shall contain the decision to hold the auction or declare it void (Section 46, Paragraph 3, Belarusian Procurement Law). The operator of the electronic trading platform shall send respective notifications to the participants (Section 46, Paragraph 4, Belarusian Procurement Law).

*3. The **period of time** between the issuance of the invitation to the electronic reverse auction and the auction shall be sufficiently long to allow suppliers or contractors to prepare for the auction, taking into account the reasonable needs of the procuring entity.*

The procurement commission reviews the first parts of the proposals regarding compliance with auction documents no later than 10 days after the deadline for the submission of proposals and no later than 2 days before the auction (Section 46, Paragraph 3, Belarusian Procurement Law). Given that participants are not required to prepare any further documents between the submission of proposals and the trading itself, the 2 days period is sufficient.

Article 56. Requirements during the electronic reverse auction

1. The electronic reverse auction shall be based on:

*(a) **Price**, where the procurement contract is to be awarded to the lowest-priced bid; or*

(b) Price and other criteria specified to suppliers or contractors under articles 53 and 54 of this Law, as applicable, where the procurement contract is to be awarded to the most advantageous bid.

The procedure of reverse electronic auctions is **compliant** with the requirements of the Article 56 of the UNCITRAL Model Law.

The winner of the auction is the participant that made the last bid if it complies with the requirements of auction documents with regard to its composition and qualification. If the last bidder is rejected (upon grounds stipulated in Section 48, Paragraph 1, Passage 4; Section 14, Paragraph 3; Section 21, Paragraph 1 of the Belarusian Procurement law), the participant with the bid before last is selected (provided it complies with the requirements) (Section 48, Paragraph 2, Belarusian Procurement Law).

2. During the auction:

*(a) All bidders shall have an **equal** and continuous opportunity to present their bids;*

*(b) There shall be **automatic evaluation** of all bids in accordance with the criteria, procedure and formula provided to suppliers or contractors under articles 53 and 54 of this Law, as applicable;*

*(c) Each bidder must receive, instantaneously and on a continuous basis during the auction, **sufficient information** allowing it to determine the standing of its bid vis-à-vis other bids;*

*(d) There shall be **no communication** between the procuring entity and the bidders or among the bidders, other than as provided for in subparagraphs (a) and (c) of this paragraph.*

During the auction, all of the approved participants shall have equal opportunities to submit bids during the entire auction.

The electronic trading platform has no discretion with regard to the assessment of bids. The participant that made the last bid and the participant with the bid before last shall be identified in a strictly nondiscretionary manner.

Since the start of the auction, the electronic trading platform shall post the number of approved participants of the auction, the initial price of the auction and the bidding step, bids by participants and the time when they were placed, information, which allows participants to know the position of their bid in relation to the bids by other participants at any moment during the trading (Section 47, Paragraph 2, Belarusian Procurement Law).

Direct communication between the procurement commission and participants is prohibited during the review of proposals (Section 46, Paragraph 2, Belarusian Procurement Law) and should be further prevented by virtue of the fact that the identities of participants are made available to the commission only with the second parts of proposals after the auction (Section 47, Paragraph 9, Belarusian Procurement Law).

*3. The procuring entity shall **not disclose** the identity of any bidder during the auction.*

During the trading it is prohibited to disclose on the electronic trading platform the names, locations and payer's numbers of participants (Section 47, Paragraph 3, Belarusian Procurement Law).

*4. The auction shall be **closed** in accordance with the criteria specified to suppliers or contractors under articles 53 and 54 of this Law, as applicable.*

The criteria for the closing of the auction are precisely described in the Procurement Law (Section 47, Paragraph 6, Belarusian Procurement Law).

5. The procuring entity shall **suspend** or terminate the auction in the case of failures in its communication system that put at risk the proper conduct of the auction or for other reasons stipulated in the rules for the conduct of the auction. The procuring entity shall not disclose the identity of any bidder in the case of suspension or termination of the auction.

The suspension or termination of the trade during the auctions is not regulated in the legislative acts. According to the Regulation of the Belarusian Universal Commodity Exchange the Exchange shall suspend the trading if conditions have arisen that make it impossible to implement the trading (Article 41¹). The regulations do not explicitly address the issue of disclosing the identities of the bidders in such case but they should be protected under the general rules that govern the situation before the closing of the trading. A participant who has identified a technical obstacle for the participation in the trading or placing a new bid shall consult with the Exchange immediately. If, regardless of the implementation of the recommendations by the Exchange, the participant has not been able to participate or place a bid, it may hand in a submission to the Exchange (Article 41²).²⁸ However, the effect of the review of such submission on the procurement procedure is unclear. The Regulations of the platform of the National Center of Marketing and Price Conjunction also foresee the suspension of procurement procedures if a failure of software or hardware makes further trading impossible (Articles 2.3.2 and 12.14).

Article 57. Requirements after the electronic reverse auction

1. The bid that at the closure of the electronic reverse auction is the **lowest-priced bid** or the most advantageous bid, as applicable, shall be the successful bid.

The procedure of reverse electronic auctions is **compliant** with the requirements of the Article 57 of the UNCITRAL Model Law.

The winner of the auction is the participant that made the last bid if it complies with the requirements of auction documents with regard to its composition and qualification. If the last bidder is rejected (upon grounds stipulated in Section 48, Paragraph 1, Passage 4; Section 14, Paragraph 3; Section 21, Paragraph 1, Belarusian Procurement Law), the participant with the bid before last is selected (provided it complies with the requirements) (Section 48, Paragraph 2).

2. In procurement by means of an auction that was **not preceded by examination** or evaluation of initial bids, the procuring entity shall ascertain after the auction the responsiveness of the successful bid and the qualifications of the supplier or contractor submitting it. The procuring entity shall reject that bid if it is found to be unresponsive or if the supplier or contractor submitting it is found unqualified. Without prejudice to the right of the procuring entity to cancel the procurement in accordance with paragraph 1 of article 19 of this Law, the procuring entity shall select the bid that was the next lowest-priced or next most advantageous bid at the closure of the auction, provided that that bid is ascertained to be responsive and the supplier or contractor submitting it is ascertained to be qualified.

The assessment of the responsiveness of proposals is carried out before the electronic auction when the procurement commission examines the first parts of proposals, which contain information such as the characteristics of the goods to be provided (Section 45, Paragraph 2, Belarusian Procurement Law). After the trading, the procurement commission shall review the second parts of the proposals with regard to, among other things, the compliance with requirements to the composition of participants and qualification requirements (Section 48, Paragraph 1). The commission shall reject a proposal if it is established that the proposal does not comply with the requirements of the auction documents, the participant is not compliant with requirements to the composition of participants and qualification requirements, the participant falls under disqualification criteria established in Section 14, Paragraph 3 of the Procurement Law, the participant has provided false documents and data, or the participant-winner does not fulfil

²⁸ <http://zakupki.butb.by/auctions/pravo-butb.html>.

requirements of auction documents, which precede signing of the contract (Section 48, Paragraph 1).

*3. Where the successful bid at the closure of the auction appears to the procuring entity to be **abnormally low** and gives rise to concerns on the part of the procuring entity as to the ability of the bidder that presented it to perform the procurement contract, the procuring entity may follow the procedures described in article 20 of this Law. If the procuring entity rejects the bid as abnormally low under article 20, it shall select the bid that at the closure of the auction was the next lowest-priced or next most advantageous bid. This provision is without prejudice to the right of the procuring entity to cancel the procurement in accordance with paragraph 1 of article 19 of this Law.*

There are no procedures for rejecting abnormally low bids.

4.3. MDB Guidelines

The following additional technical aspects from the MDB Guidelines should be noted for compliance:

1.3 The Contracting Authority must verify whether all operational conditions are met for starting the auction (e.g., if all participants are connected and whether conditions required for safe-guarding anonymity are in place).

The system is **compliant** with this requirement. For example, according to its regulations the platform of the National Centre of Marketing and Price Conjuncture shall *inter alia* ensure equal access of participants to trading and ensure access to the functions of the platform for registered and accredited parties (Articles 2.2.1 and 2.2.2). The contract between the Belarusian Universal Commodity Exchange and users defines the obligations of the platform such as ensuring proper technical functioning of electronic trading platform and the provision of the necessary level of protection of processed and stored information, its integrity and confidentiality.²⁹ There is no obligation to verify if all participants are connected, however it does not seem as if this MDB-requirement would be necessary for the Belarusian system as long as suppliers have the technical possibility to log into the system.

1.4 There should be good intelligence on past transactions in the marketplace and market structure. Each auction should be carefully monitored for market manipulation. Auctions should not be used where the relevant market structure exposes them to significant risk of improper practice such as predatory pricing (low-balling) or collusion.

The system is **partially compliant** with this requirement. The electronic trading platforms contain comprehensive data on past transactions that were done based on electronic auctions. According to the Belarusian authorities, electronic auctions are carried out for the procurement of such goods (works, services) that are provided by many suppliers in the market. However, the considerable share of electronic auctions that have been declared void imply that competition is still insufficient for some goods (works, services) that authorities have attempted to procure by using electronic auctions.

1.5 E-reverse auction should be applicable only for purchases below the International Competitive Bidding (ICB) threshold. E- reverse auction should be used only for procurement processes where price is the sole determining factor. This will generally be for goods only. Also e-reverse auction should not be used where it conflicts with the principle of open competition by locking-out significant numbers of otherwise eligible bidders who do not have access to the required technology.

The system is **partially compliant** with these requirements. The price is the sole determining factor for the evaluation of eligible proposals. However, there is no upper threshold for the use of the electronic auctions. Technology requirements for the participation in electronic auctions do not exceed ordinary standards for hardware and software equipment and as such do not lock out eligible bidders as long as they have internet access. A risk of locking out might be associated with the relatively modest level of Internet penetration in the Republic of Belarus (54.2% of the population were internet users as of 30 June 2014).³⁰ However, the experts found no data regarding the Internet penetration among business users.

3.1. The notification of an e-reverse auction shall be posted on a publicly accessible web site (or the Official site where this exists) that is well known, well maintained, functional, and affords free and unrestricted access. Concurrent advertising may also be required on additional sites and media according to specific requirements of individual MDBs

²⁹ Договор об оказании услуг по организации и проведению электронных аукционов.
<http://www.butb.by/index.php?page=47&id=324>.

³⁰ Internet World Stats, 2014. <http://www.internetworldstats.com/stats4.htm#europe>

The official website and the websites of the electronic trading platforms **comply** with the criteria “well known, well maintained, functional, and affords free and unrestricted access”.

3.5. Contracting Authorities shall ensure the integrity of Master documents in electronic format, and their online publication. Modifications must be similarly secure and stored with the Master. Contracting Authorities shall inform bidders where such Master documents can be accessed.

According to the Belarusian authorities, the hardware-software framework of the electronic trade platform provides placement, storage and access to the publicly available part of procurement information, including to the changes and amendments made by customers and participants in the relevant documents. Operators of the platforms shall ensure that the information on public procurement remains on the official website for five years and is then moved to the appropriate archive for a period of two years, as well as that the information is processed by using a certified information security system.

4.1. The Contracting Authority shall run the auction according to information specified in the invitation to the e-reverse auction. The auction device shall collect electronically and without human intervention anonymous bids which shall be automatically ranked by the system. It shall inform bidders instantaneously of new ranking(s) as they occur, together with price in such a way that bidders are able to ascertain their ranking at any moment.

The electronic trading platforms run the trading during the auctions. Judging from the Procurement Law and other regulatory acts, the platforms **comply** with the requirements of this article.

6.4. Contracting Authorities shall not charge any fees to bidders other than for value-added services (e.g. automatic notification of business opportunities). In such cases bidders shall be offered an electronic payment facility (e.g. electronic check, credit card) to avoid situations where bidders incur charges online, but must visit an office to pay for them.

The system is **not compliant** with this requirement because participants are required to pay a fee to the electronic trading platform at the stage of submitting proposals (see Article 28 of the regulation of the Belarusian Universal Commodity Exchange and Article 3.2 of the Regulation of the platform of the National Center of Marketing and Price Conjuncture).

6.5. The e-reverse auction system should be interoperable through open standards with ICT products in common use accessible by users through readily available and commonly used browser software. If specialized software is necessary, this should also be downloadable and not result in any compatibility issue.

The system is **compliant** with this requirement. Access to the platform of the Belarusian Universal Commodity Exchange is possible from computers that support stable operation of internet browsers Microsoft Internet Explorer 7.0 and higher, Opera 11.01 and higher, Mozilla FireFox 5.0 and higher, Google Chrome 4.0 and higher, Safari 4.0 and higher, Яндекс.Браузер 13.0 and higher. The speed of data transfer of the connection shall be no less than 128 Kbps (Article 8 of the regulation of the Belarusian Universal Commodity Exchange). Also the minimum technical requirements for the users of the platform of the National Center of Marketing and Price Conjuncture appear adequate (Appendix 2 to the regulations of the platform).

6.6. The system should perform reliably and securely in time-sensitive, commercial application consistent with the number of bidders participating.

The system is **compliant** with this requirement. According to information provided by Belarusian authorities the diversification of channels for external data transmission ensures the reliability and security of the electronic trading platforms when used by a large number of participants. Two high-speed optical fiber cables link the system to two different internet providers. Moreover the usage of

the capacity of the electronic trading platforms amounts to some 10% in the periods of maximum activity of users.

9.1. For any e-reverse auction processes engaged internally or through third parties, the Borrower shall develop, maintain and implement an information security management system that conforms with international standards [such as ISO/IEC 17799:2001, AS/NZS 7799.2:2003, HB 231:2000] for information management and takes account of recognized best practice, including but not limited to asset security, access security, human resource security, operations management and business application controls, documentation and script sufficiency and security, physical and online security, business continuity, record keeping and compliance.

According to the Belarusian authorities, the online system is protected against external manipulations through a system of combined firewalls. Assessing the compliance with above standards would go beyond the scope of this exercise.

9.2. *There should be no outstanding audit issues that represent material risk to the integrity or security of any project*

There is no data available on whether audits have been performed on the online system and whether any outstanding issues remained.

9.3. *Contracting Authorities shall indicate in the bidding documents procedures to be followed in the case of any failure, malfunction, or breakdown of the electronic system used during the auction process.*

The system is **partially compliant** with this article as there is no requirement to include such information in the bidding documents. However, the procedures are described in the regulations of the electronic trading platforms that are available online.

9.4. *E-REVERSE AUCTION systems and information security shall ensure that secure records are kept of every process, procedure, transmission, receipt, transaction in terms of the content, executing individual and authorisation, time and date. These records shall be made available for audit on request.*

According to the Belarusian authorities the actions of the buyers and participants are recorded in the action log of the electronic trading platform software, in the data base and the log of the application server.

10. Authentication

Where a Digital Certification/Signature is required the following shall apply:

10.1 *The certification process shall certify bidders for a reasonable period of time (at least one year) and bidders shall not be required to request a certification for each bidding process.*

The system is **compliant** with this requirement as the accreditation shall be valid for no less than three years (Section 42, Paragraph 2, Belarusian Procurement Law).

10.2 *The certification process shall be kept open permanently allowing bidders to submit the request for certification at any time in order to allow them to register in advance for future bidding processes.*

The system is **compliant** with this requirement as the accreditation system is available permanently.

10.3 *The certification process shall allow bidders to take all actions required for their certification within their own countries, without the need to travel abroad.*

The system is **partially compliant** with this provision. It is compliant with regard to residents of the Republic of Belarus, the Russian Federation and Kazakhstan. Residents of other countries have to submit documents in person in the Republic of Belarus in order to obtain the key of electronic digital signature.³¹

10.4 The certification process shall accept an electronic signature or a digital certification/signature issued by certifying authorities within the country of the bidder, or the process shall accept submission of online or offline documentation for certifying the authenticity of the bidder representative, accepting such documentation that can be obtained under commonly used procedures in the country of the bidder (for example, no notarisation in consulate or embassy shall be required).

The system is **partially compliant** with this provision. It is compliant with regard to residents of the Republic of Belarus, the Russian Federation and Kazakhstan. Residents of other countries have to submit legalized extracts from trade registers translated into Belarusian or Russian with notarised signatures of translators.³²

10.5 The certification process shall not require bidders to submit mandatory information with origin outside the bidders own country.

The system is **compliant** with this provision.

11.1 Executing agencies may use e-reverse auction systems operated by a third party under a service contract arrangement. Third party service providers and their subsidiaries or parent companies shall be ineligible to be awarded contracts on procurement processes that are undertaken through the said e-reverse auction system. Irrespective of who operates the system all requirements and conditions of this Guide shall apply.

The system is formally **not compliant** with the provision as the electronic trading platforms are not explicitly excluded from participating in the electronic auctions undertaken through their systems. However, this may be just a theoretical risk.

5. CONCLUSION

By and large, the Belarusian system of electronic auctions is compliant with international standards and within the scope of this assessment no fundamental flaws were observed. The system of electronic auctions might profit from considering the following points:

- Electronic auctions should be used for the procurement of goods (works, services) when sufficient market competition exists for their provision. The Belarusian authorities might consider elaborating simple guidelines for the analysis of the market situation of specific goods (works, services) in order to determine whether the competition is sufficiently strong in order to be adequate for the use of electronic auctions.
- There seem to be no procedures for rejecting abnormally low bids, which may result in contracts concluded at unrealistically low prices with subsequent poor delivery of the goods (works, services).
- Repealing of fees for participants of the electronic auctions might be beneficial because it is in the public interest to obtain the greatest number of auction proposals.
- The electronic auctions should not be used for large-scale procurement where international competition (beyond the Republic of Kazakhstan and the Russian Federation) would benefit

³¹ <http://zakupki.butb.by/auctions/begin.html>.

³² <http://zakupki.butb.by/auctions/begin.html>.

the goals of the procurement entity. In such cases, methods that allow bidding without physical presence in the Republic of Belarus should be preferred (such presence is required in order to obtain the key of electronic digital signature).